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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.519 OF 2007
IN
APPEAL FROM ORDER NO.363 OF 2007

Ramgopal Harkishandas Mehra & anr. Applicants
versus
Sanjay Ramgopal Mehra & anr. Respondents

Mr.Anil Singh i/by Dhanesh R. Shah for appellant.
Mr.Vinay Hegade for respondents.

CORAM : A.S.OKA, J.

DATE : 29th June 2007

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1. Rule. Learned advocate for respondents waives service. Taken up for hearing forthwith.

2. The applicants are the original plaintiffs and respondents are the original defendants. The first respondent is the younger son of the applicant and the second respondent is the daughter-in-law of the applicants. This is an unfortunate dispute where the applicants were forced to file a suit against their son and daughter-in-law. The dispute relates to residential premises occupied by the applicants. The residential premises are Flat Nos.1 and 2 and

Unit No.4 in a building of a co-operative society at Andheri, Mumbai. It is not in dispute that the aforesaid two flats and the unit form part of one residential premises in the form of a Duplex.

3. The case made out in the plaint in short is that the appellant no.1 in the year 1981 acquired Flat No.2 and Unit no.4 from the builder. It is stated that for the sake of convenience, the flat no.2 was purchased in the joint names of applicant no.1 and the first respondent, though the entire consideration came from the first applicant. The second applicant i.e. the mother acquired Flat No.1 in the year 1983.

4. The first respondent married to the second respondent in the year 1992. In the year 1994 both of them shifted to Canada. Two years thereafter the first respondent came to India and started residing in the suit property. Eight months later the second respondent came and started residing with them. It is not in dispute that the said two flats and unit no.4 on the ground, first and second floors respectively constitutes one row house and there is a common entrance. The premises consists of 4 bedrooms, a hall, dining room and kitchen. The other son of

the applicants is also residing in the same premises. There are various allegations made in the plaint regarding misconduct on the part of the respondents. There is a reference to police complaints filed by the applicants. The copies of the police complaints have been placed on record. The prayer in the suit is for an injunction restraining the respondents from entering upon and residing in the suit premises. Mandatory injunction was sought by taking out a Notice of Motion which has been rejected by the impugned order. The appeal has been admitted for final hearing.

5. While rejecting the prayer for injunction, the learned Trial Judge has recorded a prima facie finding that the entire consideration for purchase of the suit property has come from the applicants. A prima facie finding is also recorded that the maintenance charges are being paid by the applicants. The learned Trial Judge has referred to the fact that the applicants are above 70 years of age. The learned Judge has also noted that the respondents are residing in India on a Transit Visa and they are permanent residents of Canada. So far as balance of convenience is concerned, the learned Judge has

considered the fact that the applicants are aged parents of respondent no.1 who are apprehending danger to their lives at the hands of respondent no.1. The learned Judge has recorded a finding that the balance of convenience is in favour of the applicants.

6. The learned Trial Judge has, however, held that the parties are in joint possession from the year 1983. The learned Judge held that unless and until the applicants are not declared as owners of the suit flats or unless and until a strong prima facie case of ownership is established, the mandatory injunction cannot be granted.

7. The submission of the learned counsel for the applicants is that considering the findings recorded by the Trial Court this was a fit case to grant interim relief to avoid harassment to the parents in their old age. The learned counsel for the respondents submitted that there is a finding recorded by the Trial Court that the parties are in joint possession and one of the flats is jointly purchased in the name of first applicant and the first respondent. He submitted that the respondents have no place to reside in

Mumbai. He submitted that such a drastic relief cannot be granted during pendency of the appeal when such a relief has been denied by the Trial Court by the impugned order. He submitted that granting this relief will amount to passing a decree for possession. He submitted that the entire action of the applicants is at the instance of the other son of the applicants. He submitted that the respondents will be on streets if a drastic order as prayed for in this application is granted. He submitted that now the suit itself can be heard and before the suit is finally heard, the respondents cannot be thrown out.

8. I have considered the submissions and perused the affidavit-in-reply filed by the respondents to the Notice of Motion. It must be borne in mind that the agreement in respect of only one flat i.e. Flat No.2 stands in the joint names of applicant no.1 and respondent no.1. It is not at all the case of the respondents that any part of the consideration for acquiring the Flat No.2 or any other part of the suit property has come from the respondents. Prima facie, it appears to me an admitted fact that the entire consideration for purchasing the suit property has come from

the applicants. At the time when the flat no.2 was purchased, admittedly the age of first respondent no.1 was 18 years and he was not earning.

9. A perusal of the plaint shows that various instances of harassment suffered by the applicants at the hands of the respondents are set out. The suit property has only one common entrance for all the members of family. The staircase is inside the premises. In fact, flat nos.1 and 2 and Unit No.4 are amalgamated into a one row house. A reference has been made to the fact that telephone bills and maintenance charges of the flats are paid by the applicants. The entire consideration for acquiring the suit properties is paid by the applicants. There does not seem to be any dispute about these factual aspects. The finding on the aspect of balance of convenience is already recorded by the Trial Court in favour of the applicants. The Trial Court has expressed that prima facie case of ownership is not established by the applicant. The said finding appears to be prima facie erroneous as it is not in dispute that the entire consideration for purchasing the suit premises has come from the applicant no.1. The

allegations made against the respondents are of serious nature. The matter has gone to the extent where the applicants were required to file police complaints against the respondents. It is very difficult to disbelieve the said allegations made by the applicants who are the parents of the first respondent. This is a case where it appears that the parents were forced to approach the Court of law when the harassment became intolerable. Prima facie, the respondents have no independent right to reside in the suit premises. They have entered the suit premises only as the members of the family of the father. Both the applicants are as of today over 70 years of age. There is nothing wrong if the applicants at this age feel that they should reside in the suit premises peacefully without any harassment and trouble. To prevent the harassment to the parents, this is a case where the son and daughter-in-law will have to move out of the premises. A very strong prima facie case has been established by the applicants. The relief claimed in the application is that the respondents should remove their bag, baggages etc. and should not enter the suit property. Considering the aforesaid facts, prayers (a) and (b) deserve to be granted.

10. It is stated that the respondents do not have any residential accommodation available in Mumbai. As of today, they are residing with the applicants-parents. To enable the respondents to acquire suitable accommodation, a reasonable time deserves to be granted. Though prayers (a) and (b) are granted, the order will become operative only on 8th October 2007 to enable the respondents to make appropriate arrangements.

11. It is obvious that the Trial Court will decide the suit without being influenced by this order.

12. Hence, the Civil Application is disposed of by passing following order :-

a) The application is allowed in terms of prayer clauses (a) and (b). It is, however, made clear that this order will not operate till 7th October 2007 and the same will come into force on 8th October 2007;

b) Pendency of this appeal in this Court will not operate as stay of the suit proceedings and the Trial Court will be free to decide the suit as expeditiously as possible;

c) It is made clear that the suit will be decided without being influenced by this interim order passed by this Court;

d) Parties and all concerned shall act on an

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ordinary copy of this order duly authenticated by Registry of this Court.

(A.S.OKA, J.)

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1. Admit. Advocate for the respondents waives service.

(A.S.OKA, J.)